IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 2097 of 2007(Y)

PETITIONERS:
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1. PRINCIPAL SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REP. BY THE
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, REP. BY
PRINCIPAL SECRETARY, FINANCE DEPARTMENT.

BY ADV. SRI.M.P.PRAKASH, SPL.GOVT.PLEADER

RESPONDENTS:
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1. K.KARUNAKARAN NAIR,
GIRIJA BHAVAN, T.C.25/126,
GANDHARI AMMAN COIL ROAD, THIRUVANANTHAPURAM-1,
(CHAIRMAN, KERALA SERVICE PENSIONERS'S,
AYKIYAVEDI.)

2. K.ASOKA KUMAR,
SRUTHI, HOUSE NO.94, PANAVILA ROAD,
OOTTUKUZHI, THIRUVANANTHAPURAM.

3. N.PRIYADARSANAN,
H.NO.27, THOPPIL NAGAR, KUMARAPURAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.A.N.RAJAN BABU --- R2
SMT.K.SUNITHA VINOD
SRI.P.GOPALAKRISHNAN (MVA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 2097/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE COMPLAINT NO. 1965/06.

EXT.P2. COPY OF THE STATEMENT IN COMPLAINT NO. 1965/06.

EXT.P3. COPY OF THE ORDER DT. 6/11/2006 IN COMPLAINT NO. 1965/06.

EXT.P4. COPY OF THE GO P NO. 180/06/FIN DT. 18/4/06.

EXT.P5. COPY OF THE GO P NO. 253/06/FIN DT. 8/06/06.

EXT.P6. COPY OF THE GO P NO. 359/06/FIN D.1/09/06.

RESPONDENT'S EXHIBITS **NIL.**

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V.GIRI, J.

W.P.(C).No.2097 of 2007 H

Dated this the 28th day of September, 2007.

JUDGMENT

The State and its Principal Secretary are the petitioners in this writ petition, in which the challenge is against Ext.P3 order passed by the Lok Ayuktha. The complaint before the Lok Ayuktha was with regard to the implementation of the recommendations made by the Pay Commission regarding payment of pension pursuant to the Government order, G.O.(P)No.180/06/Fin dated 18.4.2006. The said Government Order contemplated transmission of the payment details to the Accountant General, processing at the office of the Accountant General and issuance of orders from the said office for the purpose of revision of pay. Apparently, this process is an elaborate one. According to the respondents-petitioners before the Lok Ayuktha, there was no reason for the Government to undertake such an elaborate exercise. They further contend that this is only an attempt to delay benefits due to them.

2. The Lok Ayuktha considered the matter and in para 6 of Ext,P3 order, held as follows:

> **"In the above circumstances we direct the Government to issue necessary direction to the pension payment treasury and the bank to extend the**

> **benefit of revision of pension as recommended by the Pay Commission which has been accepted in toto by the Government without any further delay. This must be done as expeditiously as possible, at any rate, within tow months from the date of receipt of a copy of this order. After implementing this direction, an action taken report may be filed. For that purpose, adjourned to 15.1.2007."**

3. It is Ext.P3 which has been challenged in this writ petition. It is, inter alia, contended in the writ petition that the Lok Ayuktha has no jurisdiction to pass an order of this nature. At any rate, there is no 'mal-administration'. The Lok Ayuktha has no power of judicial review or power to interfere with the order passed by the Government. But this is what has been done in this case, vide Ext.P3.

4. I heard learned Government Pleader Sri.Manojkumar and learned counsel for the respondents/petitioners before the Lok Ayuktha, Mr.Rajan Babu.

5. The primary contention is that the Lok Ayuktha has no power to pass an order in the nature of Ext.P3. In my view, this position is covered in favour of the State by the decision of a Division Bench of this court reported in **State of Kerala v. Bernad {2002(2) K.L.T. 254}**. In a batch of cases filed by the State, the same view has been adopted by me, i.e., W.P.(C)

Nos.21379/06 and connected cases vide judgment dated 13.9.2007. The view taken therein is that the Lok Ayuktha has no jurisdiction to pass an 'order'; it can only make a recommendation in terms of Section 12 of the Kerala Lok Ayuktha Act {for short "**the Act**"}

6. Another aspect, which has been dealt with in the batch of cases mentioned above, is as to whether a finding of 'mal-administration' by the Government official is a jurisdictional factor, which alone empowers the Lok Ayuktha to proceed to make a recommendation under Section 12 A of the Act. It has been found by this court in W.P.(C)No.21379/06 and connected cases that unless Lok Ayuktha is in a position to enter a positive finding that there is 'mal-administration' on the part of an official or officials, it is not open to the Lok Ayuktha to proceed to make a recommendation as such.

7. In the present case, there is no finding of 'mal-administration' on the part of any official of the Government in Ext.P3 order.

8. Learned counsel for the respondents in the writ petition Mr.Rajan Babu submitted that even assuming that Lok Ayuktha has no jurisdiction to pass an order, "but only make a recommendation", this court can direct that what has been

passed by the Lok Ayuktha be actually considered as a recommendation within the meaning of Section 12. I am afraid, I cannot accept this submission. The Lok Ayuktha is a high powered body exercising powers under the Act. The power exercised by this court is one of judicial review under Article 226 of the Constitution. Exercising such a power, it would be improper for this court to interfere with the 'wording' of an order passed the Lok Ayuktha and direct that though what is issued is an order, nevertheless it should be treated as a recommendation. That, in effect, would be re-writing an order passed by the Lok Ayuktha. In my opinion, such a process is impermissible.

For all these reasons, writ petition is allowed and Ext.P3 is set aside. It is also noteworthy to mention that the essential grievance of the respondents-petitioners before the Lok Ayuktha stands redressed and this has been made mention of in the judgment in W.P.(C)No.1670/07 which was actually heard and disposed of by me by a separate judgment today.

Sd/-

(V.GIRI)

JUDGE

sk/

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